

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to grounds for protest of property tax assessment and providing an opportunity for public comment

The Department of Revenue hereby proposes to amend Chapter 71, “Assessment Practices and Equalization,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2017 Iowa Acts, chapter 151.

Purpose and Summary

This rule making updates the grounds for protests of property tax assessments to reflect the changes made in 2017 Iowa Acts, House File 478. House File 478 removed requirements for the various grounds for protest, required that the Director of Revenue prescribe forms for the filing of a protest, and added misconduct as a ground for protest.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 6, 2018. Comments should be directed to:

Legal Services
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Email: tim.reilly@iowa.gov
Phone: 515.725.2294

Persons who want to convey their views orally should contact Legal Services, Department of Revenue, at 515.281.8003 or the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Public Hearing

No public hearing is scheduled at this time. An oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, an agency, or an association of 25 or more persons as provided in Iowa Code section 17A.4(1)“b.”

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 71.20(4) as follows:

71.20(4) Appeals to boards of review.

a. Jurisdiction. A board of review may act only upon written protests which have been filed with the board of review in compliance with Iowa Code section 441.37(1)“a.”

(1) Protests must be filed between April 2 and April 30, inclusive. In the event April 30 falls on a Saturday or Sunday, protests filed the following Monday shall be considered to have been timely filed. Protests postmarked by April 30 or the following Monday if April 30 falls on a Saturday or Sunday shall also be considered to have been timely filed.

(2) The protest must identify one or more grounds for protest under Iowa Code section 441.37.

(3) All protests must be in writing, on forms prescribed by the director of revenue, and signed by the taxpayer protester or the taxpayer’s protester’s authorized agent. A protest shall not be rejected for the sole reason that the protest was not filed using the prescribed form if the protest otherwise complies with Iowa Code section 441.37(1)“a.” A written request for an oral hearing must be made at the time of filing the protest and may be made by checking the appropriate box on the form prescribed by the department of revenue. ~~Protests may be filed for previous years if the taxpayer discovers that a mathematical or clerical error was made in the assessment, provided the taxes have not been fully paid or otherwise legally discharged.~~ The protester may combine on one form assessment protests on parcels separately assessed if the same grounds are relied upon as the basis for protesting each separate assessment. If an oral hearing is requested on more than one of the protests, the person making the combined protests may request that the oral hearings be held consecutively.

(4) A board of review may allow protests to be filed in electronic format. Protests transmitted electronically are subject to the same deadlines as written protests.

b. Grounds for protest. Taxpayers may protest to a board of review on one or more of the grounds specified in Iowa Code section 441.37. The grounds for protest and procedures for considering protests are as follows:

(1) The assessment is not equitable when compared with those of similar properties in the same assessing taxing district. ~~If this ground is a basis for the protest, the protest must contain the legal descriptions and assessments of the comparable properties. The comparable properties selected by the taxpayer must be located within the same assessing district as the property for which the protest has been filed (Maytag Co. v. Partridge, 210 N.W.2d 584 (Iowa 1973)).~~ If this ground is a basis for the protest, the protester may identify comparable properties to support the claim. In considering a protest based upon this ground, the board of review should examine carefully all information used to determine the assessment of the subject property ~~and the,~~ consider any comparable properties, and determine ~~that those properties are indeed comparable to the subject property~~ whether the evidence demonstrates the

subject property is inequitably assessed. It is the responsibility of the taxpayer to establish that the other properties submitted are comparable to the subject property and that inequalities exist in the assessments (*Chicago & N. W. Ry. Co. v. Iowa State Tax Commission*, 257 Iowa 1359, 137 N.W.2d 246 (1965)).

(2) The property is assessed at more than its actual value as defined in Iowa Code section 441.21 the value authorized by law. If this ground is used, the taxpayer must state both the amount by which the property is overassessed and the amount considered to be the actual value of the property. If this ground is the basis for a protest, the protester may indicate the amount considered to be the actual value of the property.

(3) The property is not assessable and should be exempt from taxation. If using this ground, taxpayers must state the reasons why it is felt the property is not assessable, is exempt from taxes, or is misclassified. If this ground is the basis for a protest, the protester may indicate why the property is exempt, misclassified, or not assessable.

(4) There is an error in the assessment. An error in the assessment would most probably involve erroneous mathematical computations or errors in listing the property may include, but is not limited to, listing errors, assessment of subject property for less than authorized by law, or erroneous mathematical calculations. The improper classification of property also constitutes an error in the assessment. If this ground is used, the taxpayer's protest must state the specific error alleged. If this ground is the basis for a protest, the protester must indicate the alleged error.

A board of review must determine:

1. If an error exists, and
2. How the error might be corrected.

(5) There is fraud or misconduct in the assessment. If this ground of protest is used, the taxpayer's protest protester must state the specific fraud or misconduct alleged, and the board of review must first determine if there is validity to the taxpayer's protester's allegation. If it is determined that there is fraud in the assessment or that there has been misconduct by the assessor, the board of review shall take action to correct the assessment and report the matter to the director of revenue. For purposes of this subrule, "misconduct" means the same as defined in 2017 Iowa Code section 441.9.

(6) There has been a change of value of real estate since the last assessment. The board of review must determine that the value of the property as of January 1 of the current year has changed since January 1 of the previous reassessment year. This is the only ground upon which a protest pertaining to the valuation of a property can be filed in a year in which the assessor has not assessed or reassessed the property pursuant to Iowa Code section 428.4. In a year subsequent to a year in which a property has been assessed or reassessed pursuant to Iowa Code section 428.4, a taxpayer cannot protest to the board of review based upon actions taken in the year in which the property was assessed or reassessed (*James Black Dry Goods Co. v. Board of Review for City of Waterloo*, 260 Iowa 1269, 151 N.W.2d 534 (1967); *Commercial Merchants Nat'l Bank and Trust Co. v. Board of Review of Sioux City*, 229 Iowa 1081, 296 N.W. 203 (1941)).

(6) Protests may be filed for previous years if the protester discovers that a mathematical or clerical error was made in the assessment, provided the taxes have not been fully paid or otherwise legally discharged.

c. Disposition of protests. After reaching a decision on a protest, the board of review shall give the taxpayer written notice of its decision. The decision shall be mailed no later than three days after the board of review's adjournment. The notice shall contain the following information:

- (1) The valuation and classification of the property as determined by the board of review.
- (2) If the protest was based on the ground the property was not assessable, the notice shall state whether the exemption is allowed and the value at which the property would be assessed in the absence of the exemption.
- (3) The specific reasons for the board's decision with respect to the protest.
- (4) That the board of review's decision may be appealed to either the property assessment appeal board or district court within 20 days of the board's adjournment or May 31, whichever date is later. If the adjournment date is known, the date shall be stated on the notice. If the adjournment date is not known, the notice shall state the date will be no earlier than May 31. Notice of the appeal shall be served

~~on the chairperson, presiding officer, or clerk of the board of review after the written notice of appeal has been filed with the clerk of district court.~~

1. Appeal to property assessment appeal board. An appeal from the board of review to the property assessment appeal board may be made pursuant to the provisions of Iowa Code section 441.37A and rule 701—126.1(421,441).

2. Appeal to district court. An appeal from the board of review to the district court may be made pursuant to the provisions of Iowa Code section 441.38. The appeal shall be filed in the county where the property is located. Notice of the appeal shall be served on the chairperson, presiding officer, or clerk of the board of review after the written notice of appeal has been filed with the clerk of district court.

ITEM 2. Amend subrule 71.21(8) as follows:

71.21(8) *Scope of review.* The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. ~~The~~

a. For assessment years prior to January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.

b. For assessment years beginning on or after January 1, 2018, the burden of proof is on the appellant; however, when the appellant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold the valuation.